IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2007

CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR

W.P.No.21597 of 2006

S.Ramakrishnan ... Petitioner

vs

1.The Government of Tamil Nadu
rep. by its Secretary to Government,
Department of Commercial Taxes and
Religious Endowments,
Fort St. George, Madras - 600 009.

2.The Inspector General of Registration,
Southern High Road,
Santhome, Madras - 600 028. ... Respondents

This petition came to be numbered by transfer of O.A. No.1760 of 1994 from the file of the Tamil Nadu Administrative Tribunal praying for the issuance of a Writ of certiorarified Mandamus to call for the records in G.O.Ms.No.234, Commercial taxes and Religious Endowment Department dated 16.3.1985 and set aside the same as arbitrary, unconstitutional and against the principles of natural justice so far as the petitioner is concerned and in consequence that the petitioner's name may be included in the panel of District Registrar Post for the year 1993-94 to be followed by benefits that accrued to the promotion with all attendant benefits and counting of his seniority in post of District Registrar respectively.

For Petitioner ... Mr.N.P.Kumar

For Respondents ... Mrs.Lita Srinivasan,G.A.

ORDER

The petitioner has filed Original Application No.1760 of 1994 on the file of the Tamil Nadu Administrative Tribunal praying for a Writ of certiorarified Mandamus to call for the records in G.O.Ms.No.234,

Commercial Taxes and Religious Endowment Department dated 16.3.1985, to set aside the same as arbitrary, unconstitutional and against the principles of natural justice, in so far as the petitioner is concerned and consequently prayed for a direction to include his name in the panel of District Registrar for the year 1993-94, with due to his seniority and for other monetary benefits.

2. It is the case of the petitioner that he joined the Government service in the year 1960, as Junior Assistant in the Registration Department and was promoted in 1968, as Assistant and thereafter, as Sub-Registrar Grade-II in the year 1978. He was included in the temporary panel of Sub Registrar Grade-I and posted as such on 25.02.1986. The regular panel of Sub Registrar Grade-I was not drawn for the year 1986-87 and when the panel for the year 1987-88 was drawn on 12.4.1988, the name of the petitioner was not included. The petitioner's appeal for inclusion of his name was rejected and aggrieved by the same, he has filed O.A.NO.5326 of 1992 before the Tamil Nadu Administrative Tribunal. During the pendency of the appeal, the petitioner's name was included in the panel for the year 1990-91 and posted as Sub Registrar Grade-I at Poonamallee. The Tribunal, disposed of the Original Application, by order dated 3.11.1993 and directed that the petitioner should be included in the panel of Sub Registrar Grade-I for the year 1987-88, at the appropriate place, with reference to his seniority and that he should be deemed to have been promoted from the date, on which, his immediate junior in service was included in the panel.

3. The petitioner has submitted the respondent has failed to include the name of the petitioner in the panel of Sub Registrar Grade-I for the year 1987-88, in pursuance of the order of the Tribunal. The case of the petitioner is that if had he been promoted in the year 1987-88 as Sub Registrar Grade-I, he would have been found eligible for inclusion in the panel of District Registrar, for the year 1993-94. But his name was not included in the panel, on the basis of G.O.Ms.No.234, Commercial Taxes and Religious Endowments Department dated 16.3.1985 restricting the inclusion of those officers in the panel, who had completed 55 years of age on the first day of April of the year, in which the selection for appointment was made.

4. In these circumstances, the petitioner has filed O.A.No.1760 of 1994, for the relief as stated above and the same has been transferred to the file of this Court and renumbered as W.P.No.21597 of 2006.

5. Assailing G.O.Ms.NO.234, Commercial Taxes and Religious Endowments Department dated 16.3.1985, the petitioner has submitted that when no age limit is fixed for promotion to higher posts in the Registration Department, prescribing a maximum age, for inclusion in the panel, for the post of District Registrar, is arbitrary and discriminatory. The petitioner has further submitted that he had

acquired the prescribed qualification for the post of District Registrar, even before the completion of 55 years and had the department drawn the panel every year, his name would have been included before the completion of 55 years. He has further submitted that non inclusion of his name in the panel is purely due to the fault of the department. Consequent to suspension of some officers facing disciplinary action, voluntary retirement, etc., the number of vacancies were increased enabling the juniors to qualify themselves for promotion, just at that time when the petitioner was denied of promotion, and for these reasons, the petitioner would be compelled to serve under his juniors. It is further submitted that for the next promotion such as Deputy Inspector General of Registration, Inspector General of Registration, Additional Director of Chits, no maximum age limit is fixed. Therefore, prescribing of a maximum age limit for promotion to the post of District Registrar is unconstitutional and against the principles of natural justice.

6. The respondents in their reply affidavit have submitted that the petitioner was promoted as Sub Registrar Grade-I in the year 1988. Since there was no vacancy to the post of Sub Registrar Grade-I, no regular panel of Sub Registrar Grade-I was drawn for the year 1986-87. The regular panel for the year 1987-88 was drawn on 12.4.1988. As per Rule 2(b) of the Tamil Nadu Registration Subordinate Services Rules, promotion to the post of Sub Registrar Grade-I has to be made only on merit. Since charges were framed against the petitioner for the offence under section 47-A of the Stamp Act and for contravention of specific instructions of the Inspector General of Registration, Chennai vide proceedings dated 26.8.19891, his name was not included in the panel for the year 1987-88. Further, his request for inclusion was rejected by the Government by their letter dated 09.02.1992.

7. Pursuant to the order of the Tribunal, the Government was addressed by the Inspector General of Registration for inclusion of the petitioner's name in the panel of Sub Registrar Grade-I for the year 1987-88.

8. Subsequently the name of the petitioner was included at Serial No.11-A in the panel of Sub Registrar Grade-I for the year 1987-88. The respondents have further submitted that appointment to the post of District Registrar is by recruitment by transfer from Tamilnadu Registration Subordinate Service to Tamilnadu Registration Service and since the petitioner has not satisfied the requirements in Rule of the Registration Service, he was not considered for further promotion.

Heard the Learned counsel appearing for the parties and perused the perused the materials available on record.

9. The qualifications prescribed for appointment to the post of District Registrar by recruitment of transfer is as follows:

> "Rule 4: Must not have completed or will not complete 55 years of age on the first day of April of the year in which the selection for appointment is made. The crucial date for the preparation of District Registrar for the year 1993-94 is 1.4.1993. the date of birth of the petitioner was 23.8.1937 and that he has completed 55 years of age on 23.8.1992. Since the petitioner had completed 55 years of age as on 1.4.1993, he was not eligible for promotion to the post of District Registrar by transfer. Therefore, his name was not considered for promotion in the panel of District Registrar for the year 1993-94."

10. The rule makes it clear that the appointment is by way of transfer from one service to another. While considering the qualifications prescribed under the Special Rules, viz., Tamil Nadu Registration Service, the petitioner's name was not considered for inclusion in the panel. In respect of appointment of other posts such as, Assistant Inspector General of Registration, Deputy Inspector General of Registration, Additional Inspector General of Registration, they shall be made by promotion and these posts are within Tamil Nadu Registration service.

11. In State of Rajasthan and others Vs. Lata Arun, reported in 2002(6)SCC 252, the Supreme Court considered, as to whether the Court can go into the question of examining the policy decision of the Government, prescribing educational qualification for admission to a course and whether it would be proper to interfere in the matter of recognition in the educational qualification. At paragraph 10 of the judgment, the Apex Court held as follows:

> "The points involved in the case are two fold: one relating to minimum educational qualification for admission to the course and other relating to recognition of the Madhyama Certificate issued by the Hindi Sahitya Sammelan, Allahabad as equivalent to or higher than +2 or 1st year of TDC for the purpose of admission. Both these points relate to maters in the realm of policy decision to be taken by the State Government or the authority vested with power under any statute. It is not for courts to determine whether a particular educational qualification possessed by a candidate should or should not be recognized as equivalent to the prescribed qualification in the case. That is not to say that such matters are not justiciable. In an appropriate case, the court can examine whether the policy decision or the administrative order dealing with the matter is based on a fair, rational and reasonable ground;

whether the decision has been taken on consideration of relevant aspects of the matter; whether exercise of the power is obtained with mala fide intention; whether the decision serves the purpose of giving proper training to the candidates admitted or it is based on irrelevant and irrational considerations or intended to benefit an individual or a group of candidates."

At paragraph 13, the court further held that the prescribed eligibility criteria, i.e. qualification for admission to a course or for recruitment or promotion in service are matters to be considered by the appropriate authority and it is not for the courts to decide whether a particular educational qualification prescribed by the authority, is suitable or not.

12. In Prafulla Chandra Vs. Union Territory of Tripura reported in AIR 1963 Tripura 38, at paragraph 7, the court held that,

"this Court cannot, therefore, take the place of appointing authority and, in a petition like this, go into the question of suitability of the petitioner in regard to age, qualifications, work and character or say that the appointing authority was either negligent or was guided by ulterior motives in not issuing the declaration."

13. Therefore, it is clear from the above judgments that in so far as prescribing educational qualifications, age and experience to a particular post for further promotion it is the prerogative of the executive under Art 309 of the Constitution of India. Prescribing educational qualifications, age, and experience etc., depends upon the nature of the duties and functions of the office etc., and this court has no jurisdiction to interfere with the domain of the executive. The jurisdiction of the Executive to frame rules for particular service, cannot be gone into by the court, under Article 309 of the Constitution of India.

14. In the instant case, the petitioner seeks for promotion from the post of Sub Registrar Grade-I to District Registrar in Tamil Nadu Registration Service, by recruitment of transfer. Just because, no age limit has been prescribed for the posts of Assistant Inspector General of Registration, Deputy Inspector General of Registration, Additional Inspector General of Registration, in Tamil Nadu Registration Service, the impugned G.O.Ms.NO.234, Commercial Taxes and Religious Endowment Department dated 16.3.1985, prescribing a definite age for consideration for promotion cannot be termed as arbitrary.

15. Though the petitioner was included in the panel for the post of Sub Registrar Grade-I in the year 1987-88 in the Registration Subordinate Service, he did not reach the seniority for inclusion in

the panel of District Registrar, upto 1992 - 1993. But when the petitioner reached his turn, for inclusion in the panel for the year 1993-94, he had already completed 55 years of age as on 1.4.1993 i.e. the crucial date of appointment.

16. In view of the above, the petitioner is not entitled to the relief sought for in this writ petition. Therefore, the writ petition is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

rj

To

1.The Government of Tamil Nadu
rep. by its Secretary to Government,
Department of Commercial Taxes and
Religious Endowments,
Fort St. George, Madras - 600 009.

2.The Inspector General of Registration,
Southern High Road,
Santhome, Madras - 600 028.

1 CC to the Government Pleader, SR NO.54269

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